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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ROBERT SEGURA, Plaintiff and Appellant, v. LB 1200 MAIN L.P., Defendant and Respondent.	B206442 (Los Angeles County Super. Ct. No. BO377138)

APPEAL from an order of the Superior Court of Los Angeles County, Reginald A. Dunn, Judge. Affirmed.

Law Office of Nick A. Alden and Nick A. Alden for Plaintiff and Appellant.

DLA Piper US, Edward D. Totino and Joshua Briones for Defendant and Respondent.

Plaintiff and appellant Robert Segura appeals from an order granting a motion to quash service of summons for lack of jurisdiction over defendant and respondent LB 1200 Main L.P. (LB 1200 Main) in this action arising out of agreements to purchase real property in Texas. Segura contends the motion to quash service of summons should have been denied because: 1) the hearing date was scheduled more than 30 days after the filing of the notice; 2) LB 1200 Main made a general appearance in the action by filing a preemptory challenge under Code of Civil Procedure section 170.6,[1] filing a case management statement, obtaining a continuance of the case management conference, and filing, in the alternative, a motion to stay or dismiss the action on the ground of inconvenient forum, attaching copies of 23 purchase agreements and noting the forum selection clause; and 3) the trial court had general and specific jurisdiction over LB 1200 Main. We conclude the trial court had authority to hear the motion, LB 1200 Main did not make a general appearance, and California does not have personal jurisdiction over 1200 Main in this action. Therefore, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Complaint and Motion to Quash Service of Summons

On September 6, 2007, 16 individuals,[2] including Segura, filed an action against LB 1200 Main and Land America American Title Company. On October 9, 2007, plaintiffs filed an amended complaint alleging causes of action for rescission, breach of contract, common count, common law fraud, securities fraud, and unfair practices.

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[1] All further statutory references are to the Code of Civil Procedure, unless otherwise noted.

[2] Only Segura filed a notice of appeal. The other plaintiffs are not parties to this appeal, as none filed a notice of appeal. (Cal. Rules of Court, rule 8.100(a)(1) [an appellant must serve and file a notice of appeal].)

On November 1, 2007, LB 1200 Main filed a motion to quash service of summons for lack of personal jurisdiction and improper service, or in the alternative, to dismiss or stay on the ground of inconvenient forum. The hearing date was set for December 11, 2007.

In support of the motion, LB 1200 Main submitted the declaration of its authorized signatory, David Broderick. Broderick declared that LB 1200 Main is a limited partnership organized and registered under the laws of Delaware, with its management in New York and its only place of operations in Dallas, Texas. LB 1200 Main is the developer of condominium units in a project called The Metropolitan located at 1200 Main Street in Dallas, Texas. Broderick declared that LB 1200 Main does not do business in California and is not registered, nor qualified to do business in California.

LB 1200 Main also submitted the declaration of Keith Walker, who is the senior vice-President of the company managing the construction and development of The Metropolitan. Walker declared that LB 1200 Main does not and has not conducted any advertising or marketing in California for any of its businesses. No employee or representative of LB 1200 Main has traveled to California on behalf of LB 1200 Main, nor has any employee or representative of LB 1200 Main been in contact with California on behalf of LB 1200 Main for any period of time. The majority of the evidence is located in Texas, as are the books and records of LB 1200 Main.

Somerset Management LLC is the general manager of The Metropolitan. LB 1200 Main submitted the declaration of Somerset employee Liz Jackson, who manages the condominium units at The Metropolitan. She declared that LB 1200 Main was served with the summons and complaint by regular mail addressed to its Texas office that did not include a request to acknowledge receipt or a proper return envelope. Jackson executed the declaration in Texas.

Garrison Partners Consulting supervised the marketing and sales of certain real estate for LB 1200 Main. LB 1200 Main submitted the declaration of Garrison sales agent Kristen Coultas. Coultas declared that in the summer of 2005, Segura contacted

her multiple times. He told her that he was the broker for several California buyers looking for investment properties outside of California. Segura said that he learned about the condominiums on the internet. Segura visited the condominium site in Texas several times in 2005. No representative or agent of LB 1200 Main went to California in connection with the purchases or to solicit any potential purchaser. LB 1200 Main had few communications via telephone and mail with plaintiffs, but otherwise, has not been in contact with California for any period of time. Coultas declared that Segura, on behalf of himself and his group of investors, negotiated the sale of the condominiums with LB 1200 Main by telephone and visits to Texas. LB 1200 Main sent purchase contracts to Segura using federal express mail. The executed purchase contracts were returned with deposit checks to the sales office in Dallas, Texas. The checks were not cashed, nor held in escrow by a California entity. Coultas attached copies of the purchase agreements.

The purchase agreements named specific condominium units being purchased. All of the agreements listed Michelle Lee as the purchasers' agent with a Richardson, Texas address. The agreements stated in capital letters, "This contract will be governed by and construed and enforced in accordance with the laws of the State of Texas (without regard to the principles of conflicts of law) applicable to a contract executed and performable in such state." The agreements also stated that the venue for any action "shall be in Dallas County, Texas."

LB 1200 Main filed a preemptory challenge under section 170.6, causing the action to be reassigned. On December 6, 2007, LB 1200 Main filed an amended notice of motion to quash service, or alternatively, to dismiss or stay the action, giving notice that the new hearing date for the motion would be January 16, 2008. On December 28, 2007, LB 1200 Main filed a case management statement noting that it was specially appearing and had moved to quash the complaint for lack of personal jurisdiction. LB 1200 Main estimated the numbers of days required for trial and noted generally the dates by which certain types of discovery would be completed. LB 1200 Main also filed a

stipulation executed by counsel for plaintiffs and LB 1200 Main to continue the case management conference beyond the date of the hearing on the motion to quash.

Plaintiffs' Objections to Evidence Submitted by LB 1200 Main

Plaintiffs filed evidentiary objections and a motion to strike representations about the manner of service in Jackson's declaration on the ground that she failed to explain how the employee of an unrelated company had any knowledge about service of the summons and complaint on LB 1200 Main.

Plaintiffs moved to strike passages from Coultas's declaration on the same ground—that there was no explanation as to how an employee of an unrelated company had any knowledge of LB 1200 Main's actions. Specifically, plaintiffs asked the trial court to strike the paragraph stating that LB 1200 Main sent purchase contracts to Segura and Coultas's authentication of the contracts attached to the declaration.[3]

Opposition to Motion to Quash Service of Summons

On January 2, 2008, plaintiffs opposed the motion to quash on the following grounds: 1) the motion was not properly noticed, because the date set for the hearing was more than 30 days after the filing of the notice; 2) LB 1200 Main was personally served by certified mail with returned receipt in accordance with section 415.40; 3) LB 1200 Main's preemptory challenge under section 170.6 was a general appearance; 4) LB 1200 Main made a general appearance by arguing the merits of the case in the motion, attaching the purchase agreements, asking the trial court to enforce the forum selection

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[3] Because we conclude that plaintiffs failed to show facts justifying the exercise of jurisdiction, we do not need to address Segura's request for a ruling by this court on plaintiffs' evidentiary objections concerning statements about the manner of service on LB 1200 Main and the agreements attached to the motion.

clauses, and by filing a case management statement; 5) LB 1200 Main is subject to general and specific jurisdiction in California based on its internet advertising and plaintiffs' use of telephone and mail in California to negotiate and complete the transactions; 6) the forum selection clause was unenforceable and unconscionable; and 7) the cause of action for violation of Business and Professions Code section 17200 was not subject to a forum selection clause.

Plaintiffs' attorney, Nick Alden, filed his own declaration stating that he personally placed a copy of the summons and complaint in an envelope and mailed it via certified mail with a return receipt requested to LB 1200 Main at 1200 Main Street, Dallas, Texas 75201. On September 19, 2007, he received the return receipt. On September 28, 2007, Attorney Joshua Briones called Alden and said that his client LB 1200 Main had been served and wanted a short continuance to respond. Alden agreed to the continuance. Briones did not mention any defect in the service. Briones sent a letter confirming the conversation.

Plaintiffs filed Segura's declaration. He declared that he found the real estate project on the internet. The website invited potential purchasers to contact the office of LB 1200 Main. Segura called and visited the site of the project. He learned that Lehman Brothers owned an office building and contracted with LB 1200 Main to convert the building to condominiums and sell them. He learned about different price options. Purchases required a down payment of five percent. Ninety-five percent of the purchase price could be financed.

Segura told a representative for LB 1200 Main that he wanted to purchase several units. The representative said LB 1200 Main could not sell more than two units to one investor under Securities and Exchange Commission regulations. However, the representative said that it was legal to purchase more than two units if the additional units were recorded in the names of friends and family members. Segura purchased more than two units based on the representative's advice. He told LB 1200 Main that he could not complete the transaction without financing. He could not understand all of the terms in

the contract, has no legal training, and did not know that he would have to litigate disputes in Texas.

Segura declared that he is not a real estate agent or broker and did not represent any of the other plaintiffs. He told some of the other plaintiffs about the project. Prices and terms of the purchase agreements were not negotiable. Segura does not know of any visits to Texas by the other plaintiffs, and he believes that they completed their transactions over the telephone and by mail from California.

Construction was to be completed in February 2006. The property was not ready until nearly a year later. Before the property was finished, the sub prime loan market collapsed and plaintiffs were unable to obtain financing. Segura told a representative of LB 1200 Main that he could not obtain financing and could not complete the purchase. He requested his down payment be returned to him. The representative told Segura that he would have to sue LB 1200 Main in Texas and referred him to the provision in the contract. The representative said LB 1200 Main would keep Segura's down payment and sue him for the remainder of the purchase price, including attorney fees. LB 1200 Main put the units back on the market and sold them at a higher price than plaintiffs had agreed to pay. Segura did not have the means to sue LB 1200 Main in Texas and the other plaintiffs were not in a better financial position.

Plaintiffs also filed the declaration of plaintiff Richard Correa. Correa declared that in the summer of 2005, Segura told him about a real estate project in Texas that Segura found on the internet. Segura gave Correa the information to view the website and Correa looked at it. Correa contacted LB 1200 Main. Correa dealt with LB 1200 Main directly, although he is not a real estate agent or broker. Segura did not represent Correa in any manner. Correa's purchase transaction was handled exclusively by telephone and mail from California. A representative of LB 1200 Main told Correa the same information about the project as Segura.

Correa declared that most of the other plaintiffs are not real estate agents or brokers. Correa told some of the other plaintiffs about the project. To his knowledge, the

other plaintiffs contacted LB 1200 Main directly and completed their transactions over the telephone and by mail from California. All of the contracts were executed in California.

When the building was completed, Correa was not able to obtain financing. He had a conversation with LB 1200 Main about returning his down payment that was identical to Segura's conversation with LB 1200 Main. Correa does not have the financial ability to litigate in Texas.

Reply and Ruling

LB 1200 Main filed a reply on January 9, 2008.[4] LB 1200 Main submitted Briones's declaration stating that his office had no notice the case had been reassigned based on plaintiffs' section 170.6 challenge and he caused his office staff to contact the department that he believed still had the case assignment in order to schedule the hearing date on the motion to quash service of summons. The first available date for a hearing on the motion to quash was more than 30 days from the date of the notice of hearing. After the case was reassigned, Briones caused the hearing date to be set for January 16, 2008.

LB 1200 Main submitted another declaration by Jackson. She explained that the management company for which she works manages the condominium units at The Metropolitan. She has served as the general manager since April 2007 and in September 2007, she interacted with the general contractor and its employees for the construction of

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[4] Segura's motion to strike LB 1200 Main's reply and evidentiary objections from the record on appeal is denied. LB 1200 Main served the documents on Segura's attorney by overnight express mail and required a signature to complete delivery. This method of service was "reasonably calculated to ensure delivery . . . not later than the close of the next business day after the time the . . . reply papers [were] filed." (§ 1005, subd. (c).) Segura's attorney received three notices of attempted delivery, each of which stated that he could sign and date the notice to allow delivery in his absence. Segura apparently did not contact the express mail company to obtain information about the shipper or investigate the company's efforts to deliver the package.

units at The Metropolitan. The certified mail receipt submitted by plaintiffs was signed by the general contractor who performed work at the site. He was not the general partner or manager, nor was he an agent for service of process.

LB 1200 Main submitted Walker's declaration stating that he executed all of the purchase contracts with plaintiffs and received the purchase contracts after plaintiffs executed them. He declared that the contracts attached to Coultas's declaration were true and correct copies of the executed contracts that he signed.

A hearing was held on January 16, 2008. Plaintiffs twice asked the trial court to rule on their objections to the declarations submitted by LB 1200 Main. The trial court took the matter under submission. That same day, the trial court granted the motion and dismissed LB 1200 Main from the action for lack of personal jurisdiction. Segura filed a timely notice of appeal from the order. None of the other plaintiffs appealed the ruling.

DISCUSSION

I. Timeliness of Motion to Quash

Segura contends the trial court could not grant LB 1200 Main's motion to quash, because the hearing date was scheduled more than 30 days after the filing of the notice. We disagree.

Section 418.10 allows a defendant to serve and file a notice of motion to quash service of summons on the ground of lack of jurisdiction. Subdivision (b) of section 418.10 states in pertinent part: "The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice."

"Where, as here, the issue presented is one of statutory construction, our fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.' [Citations.] We begin by examining the statutory language because it generally is the most reliable indicator of legislative intent. [Citation.] We

give the language its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.' [Citation.] If, however, the statutory language is ambiguous, 'we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.' [Citation.] Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. [Citations.] Any interpretation that would lead to absurd consequences is to be avoided. [Citation.]" (*Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.)

"[T]he word 'shall' in a statute is ordinarily deemed mandatory, and 'may' permissive" (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1143), but "a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose." (*Id.* at pp. 1147-1148.) We must also consider "'"the object to be achieved and the evil to be prevented by the legislation."' [Citation.]" (*People v. Superior Court (Zamudio*) (2000) 23 Cal.4th 183, 193; *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.)

The purpose of section 418.10 is "to permit a defendant specially to challenge the court's personal jurisdiction without waiving his right to defend on the merits by allowing a default to be entered against him while the jurisdictional issue is being determined" (*In re Marriage of Merideth* (1982) 129 Cal.App.3d 356, 363) and to allow a defendant to make an early challenge to the court's assertion of personal jurisdiction without making a general appearance (*Nelson v. Horvath* (1970) 4 Cal.App.3d 1, 4).

In this case, the trial court's calendar dictated the initial hearing date. Had the court refused to hear the motion to quash because the hearing date was set more than 30 days after the notice, it simply would have delayed the court's determination of personal jurisdiction and defeated the statutory purpose of early resolution of jurisdictional challenges. LB 1200 Main could have raised the same challenge to personal jurisdiction

by demurrer, which would not constitute a general appearance (§ 418.10, subd. (e)(1)), and the trial court may "on any terms as may be proper . . . enlarge the time for . . . demurrer" (§§ 473, subd. (a)(1), 418.10, subd. (d)). Denying the motion to quash on the ground that the hearing was not noticed within 30 days, particularly when the trial court's availability precluded a hearing within the 30-day period, would defeat the statute's purpose of allowing a defendant to challenge jurisdiction by special appearance, because upon entry of the order denying the motion to quash, the defendant would be deemed to have generally appeared in the action. (§ 418.10, subd. (e)(1)).

The statute's intent to allow a defendant to challenge jurisdiction without making a general appearance and while preserving his defenses on the merits would not be served by enforcing a strict time limit between the motion notice and the hearing. "It is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them. [Citation.]" (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) "'That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation . . . in order to insure the orderly administration of justice. . . . [Citation.]' [Citation.]" (*Ibid.*) Under the circumstances present in this case, we cannot conclude the trial court was without power to hear a motion to quash more than 30 days after it was noticed.

We also note that Segura was not prejudiced by having more time than provided by statute between the notice and the hearing on LB 1200 Main's motion to quash. He had ample time to oppose the motion and an opportunity to be heard.

II. General Appearance

Segura contends LB 1200 Main made a general appearance by filing an affidavit of prejudice under section 170.6, filing a case management statement, obtaining a continuance of the case management hearing, and filing, in the alternative, a motion to

stay or dismiss based on inconvenient forum that attached 23 purchase agreements and noted the forum selection clauses in the agreements. We disagree.

"A defendant submits to the court's jurisdiction by making a general appearance in an action. (*Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341.) A general appearance is one in which the defendant participates in the action in a manner which recognizes the court's jurisdiction. (*Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1756 [(*Mansour*)].) If the defendant raises an issue for resolution or seeks relief available only if the court has jurisdiction over the defendant, then the appearance is a general one. ([*Id.*] at pp. 1756-1757.)" (*Factor Health Management v. Superior Court* (2005) 132 Cal.App.4th 246, 250.)

However, section 418.10, subdivision (a) expressly provides that a defendant may file a notice of motion for "one or more" specified purposes, including "[t]o quash service of summons on the ground of lack of jurisdiction" and "[t]o stay or dismiss the action on the ground of inconvenient forum." In addition, subdivision (e) of section 418.10 provides that "[a] defendant or cross-defendant may make a motion under this section and simultaneously answer, demur, or move to strike the complaint or cross-complaint." Subdivision (e)(1) further provides that "no act by a party who makes a motion under this section, including filing an answer, demurrer, or motion to strike constitutes an appearance, unless the court denies the motion made under this section. If the court denies the motion made under this section, the defendant or cross-defendant is not deemed to have generally appeared until entry of the order denying the motion."

Subdivision (e) of section 418.10 allows a defendant to file an answer or other document simultaneously with the motion to quash without being deemed to have submitted to the court's jurisdiction. (*Factor Health Management v. Superior Court*, *supra*, 132 Cal.App.4th at pp. 251-252.) However, a defendant may not take an action which constitutes a general appearance and "then negate the effect of that action by a subsequent motion to quash." (*Ibid*.)

Under the circumstances of this case, none of the acts taken by LB 1200 Main constituted a general appearance. LB 1200 Main was entitled to file a peremptory challenge under section 170.6 without being deemed to have made a general appearance. It is well-established that "a party making a special appearance for the purpose of moving to quash summons is entitled to exercise the challenge provided for in section 170.6." (*La Seigneurie U.S. Holdings, Inc. v. Superior Court* (1994) 29 Cal.App.4th 1500, 1506; see *Loftin v. Superior Court* (1971) 19 Cal.App.3d 577, 578-579.)

LB 1200 Main did not make a general appearance by filing a case management statement informing the trial court of the status of the case based on the pending motion to quash service of summons or by obtaining a continuance of the case management conference. These actions did not recognize the authority of the court to proceed against LB 1200 Main or seek any type of relief based on the court's jurisdiction over LB 1200 Main. Similar actions were found not to constitute a general appearance in *Nam Tai Electronics, Inc. v. Titzer* (2001) 93 Cal.App.4th 1301, 1308-1309, disapproved on another point in *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 278, footnote 8. In *Nam Tai Electronics*, the defendant filed a status conference questionnaire noting that he had filed a motion to quash and attended a status conference at which he stated that he had filed a motion to quash, but if obligated to defend the litigation in California, he would conduct extensive discovery. The appellate court noted that the purpose of a status conference was to appraise the trial court of the status of the case, and although the trial court might make orders to schedule discovery and set a trial date, the defendant did not participate in the determination of a schedule for the litigation in that case. The appellate court stated that although "it would have been better practice to postpone the status conference when the sole defendant submits a motion to quash based on lack of personal jurisdiction, we do not believe appearance at a hearing whose purpose is to inform the court of the status of the case should be deemed a general appearance." (*Nam Tai Electronics, Inc. v. Titzer*, *supra*, at pp. 1308-1309.) In this case, LB 1200 Main did nothing more than inform the trial court of the status of the case and note that discovery

would be required in the event that the motion to quash was unsuccessful. By obtaining a continuance of the case management conference, LB 1200 Main followed the better practice. (Compare *Mansour*, *supra*, 38 Cal.App.4th at p. 1757 [while petition for review of order denying motion to quash was pending, defendants made a general appearance by filing a case management statement listing discovery that they would seek and actively participating at the case management conference setting the litigation schedule after the trial court refused to continue the conference].)

The provisions of section 418.10 clearly allowed LB 1200 Main to file a simultaneous motion to stay or dismiss the action on the ground of inconvenient forum, attach the purchase agreements, and present arguments relevant to that motion. None of LB 1200 Main's actions constituted a general appearance.

III. Jurisdiction

Segura contends LB 1200 Main has sufficient contacts with California to support the exercise of general and specific jurisdiction over the company. We disagree.

California courts may exercise jurisdiction on any basis not inconsistent with the Constitutions of the United States and California. (§ 410.10.) "If a defendant has sufficient contacts with the forum state, it may be subject to suit there on all claims, wherever they arose (general jurisdiction). If the defendant's contacts with the forum state are not sufficient to support general jurisdiction, the defendant may nonetheless be subject to special jurisdiction, which depends on an assessment of the '"relationship among the defendant, the forum, and the litigation."' (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414-415 [(*Helicopteros*)]; see also *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445-448 (*Vons*).)" (*Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 677-678 (*Roman*).)

"When a defendant moves to quash service of summons for lack of specific jurisdiction, the plaintiff bears the initial burden of demonstrating, by a preponderance of

the evidence, facts justifying the exercise of jurisdiction. Once the plaintiff meets this initial burden, the burden shifts to the defendant to show that the exercise of jurisdiction would be unreasonable. When the evidence is not in conflict, whether jurisdiction exists is a question of law which this court reviews de novo. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 (*Snowney*).)" (*Roman, supra*, 162 Cal.App.4th at p. 677.)

A. General Jurisdiction

A nonresident defendant may be subject to general jurisdiction if the contacts in the forum state are "'substantial . . . continuous and systematic.'" (*Vons, supra,* 14 Cal.4th at p. 445; see also *Helicopteros, supra,* 466 U.S. at pp. 414-415.) In such a situation, a defendant may be sued on any cause of action, even one not related to the in-state contacts. (*Vons, supra,* at p. 445; *Helicopteros, supra*, at p. 414.) "Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction." (*Vons, supra,* at p. 446.)

Maintaining an internet website that describes real property for sale in Texas and provides contact information for potential purchasers, and communicating by mail and telephone with potential purchasers in California who express interest, simply does not amount to substantial, continuous, and systematic contacts with California. (See *Stone v. State of Texas* (1999) 76 Cal.App.4th 1043, 1047-1049 [California court lacked personal jurisdiction to litigate employment contract action where all work was to be preformed in Texas.) California cannot exercise general jurisdiction over LB 1200 Main based on these activities.

B. Specific Jurisdiction

"'A court may exercise specific jurisdiction over a nonresident defendant only if: (1) "the defendant has purposefully availed himself or herself of forum benefits" [citation]; (2) "the 'controversy is related to or "arises out of" [the] defendant's contacts with the forum'" [citations]; and (3) "'the assertion of personal jurisdiction would comport with "fair play and substantial justice."'" [Citations.]' [Citation.]" (*Snowney, supra,* 35 Cal.4th at p. 1062.)

"'"The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs [its] activities toward the forum so that [it] should expect, by virtue of the benefit [it] receives, to be subject to the court's jurisdiction based on" [its] contacts with the forum.' [Citations.] Thus, purposeful availment occurs where a nonresident defendant '"purposefully direct[s]" [its] activities at residents of the forum' [citation] '"purposefully derive[s] benefit" from' its activities in the forum [citation], 'create[s] a "substantial connection" with the forum' [citation], '"deliberately" has engaged in significant activities within' the forum [citation], or 'has created "continuing obligations" between [itself] and residents of the forum' [citation]. By limiting the scope of a forum's jurisdiction in this manner, the '"purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts. . . .' [Citation.] Instead, the defendant will only be subject to personal jurisdiction if '"it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state."' [Citations.]" (*Snowney*, *supra*, 35 at pp. 1062-1063.)

"To determine whether a Web site is sufficient to establish purposeful availment, we first look to the sliding scale analysis described in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F.Supp. 1119 (*Zippo*). [Citation.] 'At one end of the spectrum

are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. [Citation.] At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. [Citation.] The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.' (*Zippo*, at p. 1124.)" (*Snowney*, *supra*, 35 Cal.4th at p. 1063.)

"*Snowney* was a class action brought by a California resident against a group of Nevada hotels alleging causes of action for fraudulent business practices, breach of contract, unjust enrichment, and violations of Business and Professions Code section 17500 et seq., based on the conduct of the hotels in failing to provide notice of an energy surcharge imposed on hotel guests. (*Snowney*, *supra*, 35 Cal.4th at pp. 1059-1060.) Although the hotels did not conduct business in California and had no bank accounts or employees in California, they advertised heavily in California and received a significant portion of their business from California residents. (*Id.* at p. 1059.)" (*Roman*, *supra*, 162 Cal.App.4th at pp. 680-681.) The advertising activities included "billboards located in California, print ads in California newspapers, and ads aired on California radio and television stations," as well as maintaining "an Internet Web site and toll-free phone number where visitors or callers may obtain room quotes and make reservations." (*Snowney*, *supra*, 35 Cal.4th at p. 1059.)

"By touting the proximity of their hotels to California and providing driving directions from California to their hotels, defendants' Web site specifically targeted residents of California. [Citation.] Defendants also concede that many of their patrons

come from California and that some of these patrons undoubtedly made reservations using their Web site. As such, defendants have purposefully derived a benefit from their Internet activities in California [citation], and have established a substantial connection with California through their Web site [citation]. In doing so, defendants have 'purposefully availed [themselves] of the privilege of conducting business in' California 'via the Internet.' (*Enterprise Rent-A-Car Company v. U-Haul Internat.* (E.D.Mo. 2004) 327 F.Supp.2d 1032, 1042-1043 [holding that a web site that specifically targeted the forum state and its residents established purposeful availment].)" (*Snowney*, *supra*, 35 Cal.4th at pp. 1064-1065.)

"The court held both that (1) the conduct of the hotels established that the hotels purposefully and voluntarily directed their activities toward California such that they should expect to be subject to California courts' jurisdiction based on their contacts with this forum, and (2) the injury suffered by the plaintiff in this case 'relates *directly* to the content of defendants' advertising in California.' ([*Snowney*, *supra*, 35 Cal.4th] at pp. 1067, 1070, original italics.) Thus, the court held that it would not be unfair or unreasonable to exercise jurisdiction over the hotels in this state. (*Id*. at p. 1070.)" (*Roman*, *supra*, 162 Cal.App.4th at pp. 680-681.)

The *Snowney* court distinguished that case from *Bensusan Restaurant Corp. v. King* (S.D.N.Y. 1996) 937 F.Supp. 295. "In *Bensusan*, the federal district court declined to exercise personal jurisdiction over the defendant based on his Web site. But, unlike the Web site at issue [in *Snowney*], the site in *Bensusan* was wholly passive-not interactive-and did not specifically target forum residents. ([*Bensusan Restaurant Corp. v. King*, *supra*,] at p. 297.) Moreover, the defendant in *Bensusan*, unlike defendants here, conducted no business with forum residents through his Web site." (*Snowney*, *supra*, 35 Cal.4th at p. 1065.)

In this case, Segura has not shown that LB 1200 Main purposefully and voluntarily directed activities toward California such that it should expect to be subject to California courts' jurisdiction based on its contacts. There is no evidence that LB 1200

Main specifically targeted residents of California for investments in the condominium project or conducted its business over the internet. LB 1200 Main simply posted information about a real estate development on the internet and responded by telephone and mail to people who expressed interest in purchasing available units. Segura traveled to Texas to view the property, while the other plaintiffs apparently made substantial investments in real property sight unseen, based solely on information obtained from the internet or friends. Plaintiffs chose to purchase real property located in another state. Now, they do not have sufficient funds to complete the transactions and want to get their down payments back by forcing the developer of the property to come to California to defend against their litigation. We conclude that LB 1200 Main did not purposefully avail itself of the benefits of this forum and the assertion of personal jurisdiction would not comport with fair play and substantial justice in this case.

DISPOSITION

The order is affirmed. Respondent LB 1200 Main L.P. is awarded its costs on appeal.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.